



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9838]

RIN 1545-BM49

Extension of Time to File Certain Information Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations providing rules regarding the automatic and non-automatic extension of time to file certain information returns. These changes are being implemented to accelerate the filing of the Form W-2 series (except Form W-2G) and forms that report nonemployee compensation (currently Form 1099-MISC with information in box 7) so they are available earlier in the filing season for use in the IRS's identity theft and refund fraud detection processes. In addition, these final regulations update the list of information returns subject to the rules regarding extensions of time to file. These regulations affect filers requesting an extension of time to file the affected information returns.

DATES: Effective date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: For dates of applicability, see §1.6081-8(g).

FOR FURTHER INFORMATION CONTACT: Jonathan R. Black, (202) 317-6845 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

**Background**

This document contains amendments to 26 CFR part 1 under section 6081 of the Internal Revenue Code (Code) regarding the extension of time to file certain information returns. On August 13, 2015, the IRS published in the **Federal Register** temporary regulations (TD 9730 (80 FR 48433)) under §1.6081-8T removing the automatic 30-day extension of time to file the Form W-2 series (except Form W-2G, “Certain Gambling Winnings”) and providing a single non-automatic 30-day extension of time to file these forms. The temporary regulations also updated the list of information returns eligible for an extension of time to file. The temporary regulations were applicable for requests for extension of time to file information returns due after December 31, 2016. The temporary regulations were set to expire August 10, 2018, but they are removed by this Treasury Decision.

A notice of proposed rulemaking (REG-132075-14 (80 FR 48472)) cross-referencing the temporary regulations was published in the **Federal Register** the same day the temporary regulations were published. The notice of proposed rulemaking contains proposed regulations that would remove the automatic 30-day extension of time to file all information returns subject to the rules formerly under §1.6081-8 and provide a single non-automatic 30-day extension of time to file those information returns. The IRS received comments on the notice of proposed rulemaking, but no public hearing was requested or held. After consideration of the comments, this Treasury Decision adopts the proposed regulations only with respect to the removal of the automatic extension of time to file the Form W-2 series (except Form W-2G) and forms reporting nonemployee compensation (currently Form 1099-MISC, “Miscellaneous

Income,” with information in box 7). The automatic extension of time to file is retained for Form W-2G, Form 1042-S, “Foreign Person’s U.S. Source Income Subject to Withholding,” Form 1094-C, “Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns,” Form 1095-B, “Health Coverage,” Form 1095-C, “Employer-Provided Health Insurance Offer and Coverage,” Form 3921, “Exercise of an Incentive Stock Option Under Section 422(b),” Form 3922, “Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c),” and Form 8027, “Employer's Annual Information Return of Tip Income and Allocated Tips,” the Form 1097 series, Form 1098 series, Form 1099 series (except forms reporting nonemployee compensation), and Form 5498 series.

I. Extension of Time to File Information Returns

Section 6081(a) generally provides that the Secretary may grant a reasonable extension of time, not to exceed 6 months, for filing any return, declaration, statement, or other document required by Title 26 or by regulation. The regulations under section 6081 generally provide rules for extensions of time to file returns. The regulations under §1.6081-8 provide specific rules for extensions of time to file certain information returns.

For requests for extension of time to file information returns due before January 1, 2017, §1.6081-8 provided that a person required to file certain information returns (the filer), or the person transmitting the return for the filer (the transmitter), could request an automatic 30-day extension of time to file those information returns by filing a Form 8809, “Application for Extension of Time to File Information Returns” on or before the due date of the information return. A filer or transmitter was not required to sign the Form 8809 or provide an explanation to request the automatic 30-day extension.

Prior to expiration of the automatic 30-day extension period, a filer or transmitter that obtained an automatic 30-day extension of time to file could request an additional non-automatic 30-day extension of time to file. Under §1.6081-8, the IRS had the discretion to grant this request if the IRS determined that a further extension was warranted. Unlike a request to obtain an automatic extension, a request for a non-automatic extension was required to be signed by the filer or transmitter under penalties of perjury and include an explanation of why an additional extension of time to file was needed. No further extensions of time to file were permitted under §1.6081-8.

## II. Temporary and Proposed Regulations

Identity theft and refund fraud are persistent and evolving threats to the nation's tax system. They place an enormous burden on the tax system and taxpayers. Identity thieves and unscrupulous preparers often claim refunds by electronically filing fraudulent tax returns early in the tax filing season. The IRS uses third-party information returns to increase voluntary compliance, verify accuracy of tax returns, improve collection of taxes, and combat fraud, including refund fraud committed by those using the stolen identities of legitimate taxpayers. Accelerating the receipt of third-party information returns is one way to better enable the IRS to identify and stop fraudulent refund claims before they are paid.

On August 13, 2015, temporary and proposed regulations under section 6081 were published in the **Federal Register** to improve the IRS's ability to use third-party information returns to combat identity theft and refund fraud. The temporary regulation under §1.6081-8T, which replaced the regulation under §1.6081-8 for requests for extension of time to file certain information returns due after December 31, 2016, removed information returns in the Form

W-2 series (except Form W-2G) from the list of information returns eligible for the automatic 30-day extension of time to file and instead provided a single non-automatic 30-day extension of time to file those information returns.

Section 1.6081-8T(a) retained the rules under §1.6081-8 for obtaining an automatic 30-day extension of time to file Form W-2G, Form 1042-S, Form 1095-B, Form 1095-C, Form 8027, the Form 1097 series, Form 1098 series, Form 1099 series, and Form 5498 series. It also retained the additional non-automatic 30-day extension of time to file these information returns.

In addition, the temporary regulations updated the list of information returns that are eligible for automatic and non-automatic extensions of time to file by adding Form 1094-C, Form 3921, and Form 3922 to the list in §1.6081-8T(a). As explained in the preamble to the temporary regulations, the addition of these forms merely updated the list to reflect current practice at the time the temporary regulations were published.

The proposed regulations were broader than the temporary regulations. The notice of proposed rulemaking proposed to remove the automatic extension of time to file Forms 1042-S, 1094-C, 1095-B, 1095-C, 3921, 3922, and 8027; to remove the automatic extension of time to file the Form W-2 series (including Form W-2G), Form 1097 series, Form 1098 series, Form 1099 series, and Form 5498 series; and to allow only a single non-automatic 30-day extension of time to file all of these information returns. The proposed non-automatic extension would have been available on the same terms as the non-automatic extension for the Form W-2 series in the temporary regulations. The preamble to the proposed regulations provided that removal of the automatic extension would not apply to information returns

(other than the Form W-2 series except Form W-2G) due any earlier than January 1, 2018. See 80 FR 48472.

III. Statutory Changes to Due Dates and Penalties

Section 201 of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), Public Law 114-113, Div. Q (129 Stat. 3040, 3076), enacted on December 18, 2015, amended section 6071 of the Code to change the due date for filing Form W-2, "Wage and Tax Statement," and any returns or statements required by the Secretary to report nonemployee compensation. Nonemployee compensation is currently reportable in box 7 of Form 1099-MISC. The amendments are effective for information returns for calendar years beginning after 2015.

Prior to enactment of the PATH Act, the Form W-2 was required to be filed by the last day of February (February 28 if amounts were not subject to the Federal Insurance Contribution Act), or March 31 if filed electronically. See §1.6041-2(a)(3)(ii) and §31.6071(a)-1(a)(3)(i) (as in effect until July 20, 2017). Also prior to the enactment of the PATH Act, the form reporting nonemployee compensation, Form 1099-MISC, was required to be filed by February 28, or March 31 if filed electronically. See §1.6041-6 (as in effect until July 20, 2017).

As amended by the PATH Act, section 6071 provides that the due date for filing the Form W-2 and any returns or statements required by the Secretary to report nonemployee compensation is January 31 of the calendar year following the calendar year for which the information is being reported, regardless of whether these information returns are filed on paper or electronically. Section 31.6071(a)-1T(a)(3) provides this due date for the entire Form W-2 series (except Form W-2G). The due date for filing Form 1099-MISC that does not report

nonemployee compensation was unchanged by the PATH Act amendment to section 6071, and it remains February 28, or March 31 if filed electronically.

Section 201 of the PATH Act also amended section 6402 to provide that no credit or refund of an overpayment may be made to a taxpayer before the fifteenth day of the second month following the close of the taxable year (February 15 for calendar year taxpayers) if the Additional Child Tax Credit (ACTC) under section 24(d) or the Earned Income Credit (EIC) under section 32 is allowed for such taxable year.

In addition, section 202 of the PATH Act amended sections 6721 and 6722 of the Code to generally provide a \$100 de minimis error threshold (\$25 for withholding) under which the penalties for failure to file and failure to furnish accurate information returns and payee statements do not apply. Payees, however, can still elect to receive accurate payee statements, in which case the de minimis threshold does not apply to the penalties for failure to file and furnish. See section 6722(c)(3)(B).

### **Summary of Comments**

There were eleven written comments submitted in response to the notice of proposed rulemaking. They are available at <http://www.regulations.gov> or upon request.

#### **I. Comments Recommending Alternatives to Removing the Automatic Extension of Time to File Information Returns**

Comments stated that the automatic extension of time to file should not be removed for any information returns and instead alternative or complementary steps to reduce fraud should be taken. Those suggested steps include: (1) delay the start of the filing season or issue refunds only after the Social Security Administration (SSA) has transferred all Form W-2

information to the IRS; (2) require electronic filing of all information returns at issue; (3) reduce the threshold requirement for filing information returns electronically from 250 returns to five returns; and (4) issue an identity protection personal identification number (IP PIN) to each known taxpayer.

Some of these steps have already been taken. For instance, the PATH Act amended section 6402 so that refunds cannot be issued before February 15 if the EIC or the ACTC is allowed for the taxable year. This amendment has the effect of allowing the IRS to receive more Form W-2 information with respect to these returns before issuing refunds. Other steps, such as requiring electronic filing of all information returns or reducing the electronic filing threshold, require legislation to implement.

Comments suggesting that the IRS delay the start of the filing season (without regard to the February 15 date if the EIC or the ACTC is allowed) or issue refunds only after receiving Form W-2 information from the SSA were not adopted. Taxpayers who rely on their tax refunds to pay bills for necessary expenses might be unduly burdened by such a delay. Additionally, when Congress amended section 6402 to prevent the IRS from issuing some refunds before February 15, it did not use a later date or delay refunds to all taxpayers, thus indicating a sensitivity to the negative effect that further delaying taxpayer refunds could have on certain taxpayers.

Regarding the comment that issuing an IP PIN to each known taxpayer would reduce fraud and identity theft and eliminate the need to accelerate receipt of certain information returns, the Treasury Department and the IRS disagree. While the IP PIN has been an effective tool for protecting taxpayers from subsequent refund fraud, it is not a holistic or sustainable



solution that can be applied to the more than 150 million returns that are filed annually each year. See TIGTA report 2017-40-026, “Inconsistent Processes and Procedures Result in Many Victims of Identity Theft Not Receiving Identity Protection Personal Identification Numbers,” 20–22. Additionally, even if the IRS implemented such a proposal, the IRS’s efforts to reduce fraud and identity theft would be further enhanced by also accelerating receipt of information returns, such as Form W-2 and forms reporting nonemployee compensation. Accordingly, this suggestion has not been adopted.

Comments also suggested that the IRS extend the filing deadline for individual income tax returns to May 15, rather than limiting the availability of an automatic extension of time to file information returns. Taxpayers may already request an automatic six-month extension of time to file individual income tax returns under §1.6081-4, effectively extending the filing deadline (but not the deadline by which to pay) as suggested by the comment. However, even if the IRS extended the filing deadline to May 15 for all individual taxpayers, that would do little to prevent fraud because fraudulent filers typically file early in the filing season so that their fraudulent returns are processed before legitimate taxpayers file their tax returns and before the IRS receives information returns.

II. Comments Recommending Retention of the Automatic Extension of Time to File Information Returns with Low Risk of Fraud

Comments suggested that the regulations retain the automatic extension of time to file forms other than Form W-2 and forms reporting nonemployee compensation, because the other forms, specifically Form 1099-INT, Form 1099-DIV, Form 1042-S, and the Form 1095 series, are not major sources of withholding or backup withholding information and are not

relevant to preventing fraud. The comments cited GAO Report GAO-14-633, “Identity Theft, Additional Actions Could Help IRS Combat the Large, Evolving Threat of Refund Fraud,” for the assertion that information return documents other than Form W-2 do not have a nexus to fraud. The comments also stated that Form 1042-S is not as susceptible to fraud because Form 1040-NR, “U.S. Nonresident Alien Income Tax Return,” and Form 1120-F, “U.S. Income Tax Return of a Foreign Corporation,” are already subject to an extensive review by the IRS.

In contrast, one comment stated that the burden on filers of removing the automatic extension of time to file was a worthwhile tradeoff, given the financial burdens on taxpayers whose refunds are stolen. This comment suggested that filers should be able to verify many of their records prior to the end of the tax year, and that it was their responsibility to maintain accurate records.

The Treasury Department and the IRS agree that accelerating the filing date for information returns reporting compensation will contribute more to the reduction of refund fraud than accelerating the filing date of other information returns would. This is because refund fraud is most prevalent on individual income tax returns reporting wages or self-employment income. Consistent with this, Congress enacted section 201 of the PATH Act as part of its program integrity measures included in the Consolidated Appropriations Act of 2016 to accelerate the date by which Form W-2 and statements reporting nonemployee compensation, but not other information returns, must be filed. In addition, §31.6071(a)-1T(a)(3) provides that the due date implemented by the PATH Act for Form W-2 applies to the entire Form W-2 series (except Form W-2G). Therefore, the comment is adopted, and the final regulations only remove the automatic extension of time to file the Form W-2

series (except Form W-2G) and forms reporting nonemployee compensation (currently Form 1099-MISC with information in box 7). The IRS continues to study the appropriateness of the automatic extension for other information returns.

III. Comments Regarding Increased Errors as a Result of Removal of the Automatic Extension of Time to File

Comments stated that removing the automatic extension of time to file would compress the time between the date the payee statements are sent and the information returns are required to be filed with the IRS. This is particularly true in the case of Form 1099-B, "Proceeds from Broker and Barter Exchange Transactions," and Form 1099-MISC with information in boxes 8 or 14 only (relating to substitute dividends and tax-exempt interest payments reportable by brokers and gross proceeds paid to attorneys), because the due date to furnish statements to payees for those forms is February 15. Without the automatic extension, there is less time before the filing due date for recipients of the payee statements to discover errors and communicate them to the filer, resulting in more errors on filed information returns and the need to file more corrected information returns.

Comments also stated that this compression is made more acute because the system for filing information returns electronically (FIRE) requires files be in a format different from the format many filers use to prepare the payee statements. Without the automatic extension of time to file there will be less time to accommodate these differences, which could lead to an increase in errors and the need to file corrected information returns.

The comments also stated that filers' necessary year-end audit practices with respect to information that is ultimately reported on information returns are time-consuming, and the

automatic extension of time to file increases the accuracy of filed returns. Finally, the comments stated that removing the automatic extension further compresses the filing season, burdening accounting professionals who already work 60 to 80 hours per week in the months leading up to the filing deadlines.

One comment supported the proposed regulations generally, but opposed the removal of the automatic extension of time to file the Form 1099 series. The comment stated that the pressure to meet a rigid deadline would lead to more errors for small businesses without full-time bookkeepers and would have a financial impact on those businesses. Small startups would be disproportionately affected because they are more likely to use independent contractors, for which they have to file information returns in the Form 1099 series. The comment requested that the IRS conduct a regulatory flexibility analysis and make it available for public comment if these final regulations remove the automatic extension of time to file the Form 1099 series.

The comments supporting retention of the automatic extension of time to file most information returns are adopted in the final regulations. However, as discussed above in section II of this Summary of Comments, acceleration of the IRS's receipt of information relating to compensation is an important tool to reduce fraud and noncompliance. Further, the removal of the automatic extension of time to file the Form W-2 series (except Form W-2G) and forms reporting nonemployee compensation is consistent with section 201 of the PATH Act and its supporting regulations under §31.6071(a)-1T(a)(3), which together accelerated the filing deadline for both the Form W-2 series (except Form W-2G) and forms reporting nonemployee

compensation. Accordingly, the final regulations remove the automatic extension of time to file the Form W-2 series (except Form W-2G) and forms reporting nonemployee compensation.

With regard to the request for a regulatory flexibility analysis in the case of the removal of the automatic extension of time to file the Form 1099 series, the only affected forms are forms reporting nonemployee compensation. As certified in the Special Analyses section of this Treasury Decision, the Treasury Department and the IRS have concluded that these regulations will not have a significant economic impact on a substantial number of small entities. As a result of this certification, a regulatory flexibility analysis is not required.

With regard to Form 1094-C and the Form 1095 series, the comments stated that preserving the automatic extension of time to file would allow health insurers to maintain their current processes. The Treasury Department and the IRS agree with these comments and, therefore, the final regulations retain the automatic extension of time to file Form 1094-C, Form 1095-B, and Form 1095-C.

IV. Comments About Forms W-2 and Reliance on Information or Actions by Third Parties

Comments stated various reasons why the automatic 30-day extension of time to file Form W-2 should be retained. Comments stated that to prepare Form W-2, filers rely on third-party payment information from states on sickness and disability payments that is not due to the filers until January 15, and filers have no control over the timeliness and accuracy of this third-party information. The comments also stated that Form W-2 filers rely on third-party information that they receive after the end of the tax year for nonqualified moving expenses, prizes and awards, the value of company housing and travel, and non-cash fringe benefits.

As discussed under section II and reiterated under section III of this Summary of Comments, removal of the automatic extension of time to file the Form W-2 series (except Form W-2G) will contribute to the reduction of refund fraud and is consistent with section 201 of the PATH Act and its supporting regulations. The Treasury Department and the IRS understand that there may be some situations that will necessitate filers to seek a non-automatic extension of time to file; for instance, when a filer does not timely receive the statement of sick pay required under §31.6051-3(a)(1). Removal of the automatic extension, however, will increase the number of Forms W-2 received by the IRS early enough in the filing season for the IRS to verify information and reduce payment of fraudulent refunds.

V. Comments on Form 1042-S, Reclassification of Distributions, and Additional Burdens

Comments stated that corrections are sometimes necessary after the statutory deadlines to file certain returns, such as Form 1042-S, because of reclassifications of distributions. Information regarding these reclassifications is not available until sometime between mid-January and the end of February. If Forms 1042-S must be filed without the benefit of an automatic extension of time to file, then it is more likely that they will have to be amended later based on the reclassification information. Comments added that software vendors typically release their software in late February for Form 1042-S, and that there is not enough time to format information and test the software prior to the March 15 statutory due date. Comments also mentioned that filers regularly seek extensions of time to furnish recipient statements for Form 1042-S in addition to extensions of time to file, and the comments advised that the IRS should expect an increase in the filing of both amended information returns and amended income tax returns as a result of the unavailability of the

automatic extension, particularly for Form 1042-S. Comments further added that updates to the Form 1099 series resulting from the Foreign Account Tax Compliance Act, Public Law 111-147, Title V, Subtitle A (124 Stat. 71, 97), and sections 6050W and 6045B require year-end system upgrades and testing, which must be performed by the same people who otherwise implement the year-end compliance processes and therefore increase, rather than decrease, the time needed to file. Finally, the comments mentioned that information that flows from partnership returns or upstream withholding agents is not available until March 15.

As discussed previously under section II of this Summary of Comments, these final regulations do not remove the automatic extension of time to file information returns other than the Form W-2 series (except Form W-2G) and forms reporting nonemployee compensation. Therefore, the comment that Form 1042-S should remain eligible for the automatic extension of time to file has been adopted. However, the IRS continues to study the appropriateness of the automatic extension of time to file Form 1042-S.

VI. Comments on Penalties

One comment suggested that, given filers' potential inability to comply with the statutory filing dates, filers should have reassurances that the IRS will grant the non-automatic extension of time to file so that they do not face penalties. The comment therefore requested that specific criteria for granting the non-automatic extension should be published in the final regulation. The comment also stated that the proposed requirement to show extraordinary circumstances or catastrophe is too strict a standard to impose on the extension process. The comment further stated that penalties would be unreasonable where a request for an extension of time to file was not granted, and the process of seeking relief if penalties were

imposed in these situations would be arduous. In addition, the comment stated that despite the new \$100 de minimis error threshold exception for penalties, there would still be a substantial number of errors that would exceed the de minimis threshold and require correction. Also, comments noted that the increase in errors in information returns filed with the IRS as a result of not obtaining an extension of time to file might lead to more penalty notices, which would increase the burden on filers seeking relief under reasonable cause. This increase in penalty notices would also increase the burden on the IRS, which would have to handle many more requests for abatements or waivers of the penalty.

The Treasury Department and the IRS considered these comments and agree that it is appropriate to set forth the specific criteria under which the IRS will grant the non-automatic extension of time to file. Since publication of the temporary and proposed regulations in 2015, Form 8809 has been revised to provide specificity around the criteria for when a non-automatic extension will be granted. When Form 8809 allowed the filer or transmitter to provide a narrative explanation of the need for an extension, it was difficult to review the explanations in a timely manner because of the length of some of the explanations and the various ways that filers or transmitters would describe the reason for the extension request. To eliminate this issue, the form has been revised to provide checkboxes for the filer or transmitter to indicate the reason for the extension request.

The IRS intends to update Form 8809 in time for the 2019 filing season to provide that a non-automatic extension of time to file will be granted if and only if (1) the business suffered a catastrophic event in a Federally Declared Disaster Area that made the business unable to resume operations or made necessary records unavailable; (2) fire, casualty or natural disaster



affected the operation of the business; (3) death, serious illness, or unavoidable absence of the individual responsible for filing the information returns affected the operation of the business; (4) the information return is being filed for the first year the business was established; or (5) the filer did not receive timely data on a third-party payee statement. This third-party payee statement might be a Schedule K-1, "Partner's Share of Current Year Income, Deductions, Credits and Other Items," Form 1042-S, or the statement of sick pay required under §31.6051-3(a)(1). Additionally, the extension will be granted even if the filer receives the third-party payee statement by the statutory furnishing deadline, provided that the filer did not receive the statement in time to prepare an accurate information return.

These five criteria will all be set forth in checkboxes on Form 8809. The first four of these criteria are already present on the form, with non-substantive differences in phrasing, and were derived from the reasons for which the IRS would grant a non-automatic extension of time to file during recent years when a narrative explanation was permitted. The fifth criteria will be added to Form 8809 in response to comments about reliance on third-party information. The Treasury Department and the IRS request comments on these criteria and welcome comments suggesting additional criteria that should be added to Form 8809 as reasons to grant the non-automatic extension. Interested parties can address the existing criteria and suggest new criteria by submitting comments on Form 8809 at <http://www.irs.gov/FormsComments>.

Also, with regard to the comments about the potential increase in errors and penalty notices, penalty abatement may be available for filers who fail to file timely but do not receive an extension of time to file. Although requests for abatement may increase under the new rules, the IRS is prepared to consider those additional requests. The Treasury Department and

the IRS request comments regarding how the IRS may reduce the burden on filers who request abatement.

### **Special Analyses**

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Although the regulations may potentially affect a substantial number of small entities, the economic impact on these entities is not expected to be significant. If at least one of the criteria for granting an extension applies, a business may obtain a 30-day extension of time to file by properly completing Form 8809, so many businesses will still obtain an extension of time to file. Prior versions of §1.6081-8 also required businesses to file Form 8809 to obtain an extension, so no additional economic impact is associated with the requirement to file this form. For businesses that do not qualify for the extension, the regulations do not impose new information reporting requirements, but they do affect whether the filing due date may be extended. Although there may be some additional costs associated with ensuring that information returns filed by their statutory due date, as opposed to the extended due date, are accurate, those costs will not impose a significant economic impact on a substantial number of small entities.

In addition, statutory changes have minimized the benefit of the automatic extension of time to file. Prior to these changes, most filers had a due date (without regard to extensions) of

March 31 for the information returns currently subject to the rule eliminating the automatic extension of time to file—the Form W-2 series (except Form W-2G) and Form 1099-MISC reporting nonemployee compensation. With the automatic extension, these filers generally had until April 30 to file these information returns. The PATH Act and the accompanying regulations accelerated the due date for the Form W-2 series (except Form W-2G) and Form 1099-MISC reporting nonemployee compensation from March 31 to January 31. Therefore, even if the automatic extension was still available, the Form W-2 series (except Form W-2G) and Form 1099-MISC reporting nonemployee compensation would be due much earlier than under prior law, so the statutory change under the PATH Act is the primary cause of any additional cost associated with having to file these forms earlier in the filing season. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received from the Small Business Administration.

**Drafting Information**

The principal author of these regulations is Jonathan R. Black of the Office of the Associate Chief Counsel (Procedure and Administration).

**Statement of Availability of IRS Documents**

The IRS Revenue Procedure cited in this document is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

### PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.6081-8 is revised to read as follows:

#### **§1.6081-8 Extension of time to file certain information returns.**

(a) Certain information returns eligible for an automatic extension of time to file--(1)

Automatic extension of time to file. A person required to file an information return (the filer) on the forms or form series listed in Table 1 will be allowed one automatic 30-day extension of time to file the information return beyond the due date for filing, if the filer or the person transmitting the information return for the filer (the transmitter) files an application in accordance with paragraph (c)(1) of this section.

<b><u>Table 1 to paragraph (a)(1)</u></b>	
<b><u>Form or Form Series</u></b>	<b><u>Name of Form</u></b>
Form W-2G	"Certain Gambling Winnings"
Form 1042-S	"Foreign Person's U.S. Source Income Subject to Withholding"
Form 1094-C	"Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns"
Form 1095-B	"Health Coverage"
Form 1095-C	"Employer-Provided Health Insurance Offer and Coverage"
Form 3921	"Exercise of an Incentive Stock Option Under Section 422(b)"

Form 3922	"Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)"
Form 8027	"Employer's Annual Information Return of Tip Income and Allocated Tips"
Form 1097 series	
Form 1098 series	
Form 1099 series (except forms reporting nonemployee compensation)	
Form 5498 series	

(2) Non-automatic extension of time to file. One additional 30-day extension of time to file an information return on a form listed in paragraph (a)(1) of this section may be allowed if the filer or transmitter submits a request for the additional extension of time to file before the expiration of the automatic 30-day extension of time to file. No extension of time to file will be granted under this paragraph (a)(2) unless the filer or transmitter has first obtained an automatic extension of time to file under paragraph (a)(1) of this section. To request the additional 30-day extension of time to file, the filer or transmitter must satisfy the requirements of paragraph (c)(2) of this section. No additional extension of time to file will be allowed for an information return on a form listed in paragraph (a)(1) of this section under §1.6081-1 beyond the extensions of time to file provided by paragraph (a)(1) of this section and this paragraph (a)(2).

(b) The Form W-2 series (except Form W-2G) or forms reporting nonemployee compensation. Except as provided in paragraph (f) of this section, the filer or transmitter of an information return on the Form W-2 series (except Form W-2G) or a form reporting nonemployee compensation may only request one non-automatic 30-day extension of time to

file the information return beyond the due date for filing it. To make such a request, the filer or transmitter must submit an application for an extension of time to file in accordance with paragraph (c)(2) of this section. No additional extension of time to file will be allowed for an information return on a form listed in this paragraph (b) under §1.6081-1 beyond the 30-day extension of time to file provided by this paragraph (b).

(c) Requirements--(1) Automatic extension of time to file. To satisfy this paragraph (c)(1), an application must--

(i) Be submitted on Form 8809, "Request for Extension of Time to File Information Returns," or in any other manner as may be prescribed by the Commissioner; and

(ii) Be filed with the Internal Revenue Service office designated in the application's instructions on or before the due date for filing the information return.

(2) Non-automatic extension of time to file. To satisfy this paragraph (c)(2), a filer or transmitter must--

(i) Submit a complete application on Form 8809, or in any other manner prescribed by the Commissioner, indicating that at least one of the criteria set forth in the forms, instructions, or other guidance for granting an extension applies;

(ii) File the application with the Internal Revenue Service in accordance with forms, instructions, or other appropriate guidance on or before the due date for filing the information return (for purposes of paragraph (a)(2) of this section, determined with regard to the extension of time to file under paragraph (a)(1) of this section); and

(iii) Sign the application under penalties of perjury.

(d) Penalties. See sections 6652, 6693, and 6721 through 6724 of the Code for failure to comply with information reporting requirements on information returns described in this section.

(e) No effect on time to furnish statements. An extension of time to file an information return under this section does not extend the time for furnishing a statement to the person with respect to whom the information is required to be reported.

(f) Form W-2 filed on expedited basis. This section does not apply to an information return on a form in the W-2 series if the procedures authorized in Rev. Proc. 96-57 (1996-2 CB 389) (or a successor revenue procedure) allow an automatic extension of time to file the information return. See §601.601(d)(2)(ii)(b) of this chapter.

(g) Applicability date. This section applies to requests for extensions of time to file information returns required to be filed after December 31, 2018. Section 1.6081-8T (as contained in 26 CFR part 1, revised April 1, 2018) applies to extensions of time to file information returns required to be filed before January 1, 2019.

**§1.6081-8T [Removed]**

Par. 3. Section 1.6081-8T is removed.

Kirsten Wielobob

Deputy Commissioner for Services and Enforcement.

Approved: July 13, 2018

David J. Kautter

Assistant Secretary of the Treasury (Tax Policy).